IT 95-100

Tax Type: INCOME TAX

Issue: Federal Change (Individual)

STATE OF ILLINOIS

DEPARTMENT OF REVENUE

OFFICE OF ADMINISTRATIVE HEARINGS

CHICAGO, ILLINOIS

THE DEPARTMENT OF REVENUE)

OF THE STATE OF ILLINOIS) No.

V.)

TAXPAYER,) Daniel D. Mangiamele

Administrative Law Judge

Taxpayer)

RECOMMENDATION FOR DISPOSITION

SYNOPSIS: This matter is before this administrative tribunal as a result of a timely Protest by taxpayer (hereinafter referred to as the "taxpayer") to a Notice of Deficiency (hereinafter referred to as the "Notice") issued to them on January 27, 1995. The basis of the Notice is the Illinois Department of Revenue's (hereinafter referred to as the "Department") determination that the taxpayer had failed to file an Illinois 1040 Income Tax return for the year ended December 31, 1991. The Notice proposed a tax liability, as well as penalties pursuant to 35 ILCS 5/1001, 5/804 and 5/1005 for failure to file an IL-1040 return, failure to make estimated tax payments and failure to pay the entire tax liability by the due date.

Taxpayer contended in his Protest that he was not a resident of Illinois until July of 1991 and did not earn income subject to Illinois tax during 1991. Taxpayer waived a formal hearing in this matter.

The issues to be resolved are:

- (1) Whether taxpayer was Illinois residents in 1991 and were required to file an IL-1040 return for the year ended December 31, 1991?
- (2) Whether penalties should be assessed pursuant to 35 ILCS 5/1001,

5/804 and 5/1005?

Based upon the evidence contained in this record, it is recommended that the Notice of Deficiency be upheld in full for the year ended December 31, 1991.

FINDINGS OF FACT:

- 1. The Department issued a Notice of Deficiency for the subject taxable year on January 27, 1995. (Dept. Ex. No. 1)
- 2. Taxpayers' Protest contended that taxpayer was not resident of Illinois and earned no income in Illinois during the taxable year.
 - 3. No Documentation was submitted in support of taxpayer's protest.

CONCLUSIONS OF LAW: All persons who either earn or receive income in or as a resident of the State of Illinois are subject to Illinois income tax. 35 ILCS 5/201(a). In this record, taxpayer have admitted that he did not filed an IL-1040 for 1991. The record contains no documentation that taxpayer earned no income in Illinois in 1991.

The Notice of Deficiency is prima facie correct so long as its proposed adjustments meet some minimum standard of reasonableness. Vitale v. Illinois Department of Revenue, 118 Ill.App.ed 210 (3rd Dist. 1983). In order to overcome this prima facie correctness, the taxpayer must present competent evidence that the proposed adjustments are incorrect. Masini v. Department of Revenue, 60 Ill.App.3d 11 (1st Dist. 1978). Taxpayer have not met that burden in this record. The record is clear that taxpayer failed to file an IL-1040 return for 1991 and presented no Documentation in support of Taxpayer's protest.

RECOMMENDATION: It is my recommendation that the subject Notice of Deficiency be upheld as issued plus penalties and interest to date.

Daniel D. Mangiamele Administrative Law Judge